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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,576	10/03/2001	Michael V. Chobotov	24641-1040B	2628

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EXAMINER

MILLER, CHERYL L

ART UNIT PAPER NUMBER

3738

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/970,576

Applicant(s)

CHOBOTOV, MICHAEL V.

Examiner

Cheryl Miller

Art Unit

3738

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1 and 19-42.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

BRUCE SNOW
PRIMARY EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): Applicants reply has overcome the 35 U.S.C. 112 rejection and the double patenting rejection.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments have not been found persuasive. Applicant has argued that Silverman et al. (USPN 5,931,865) does not disclose separate graft members that are configured to be separately layered in a deployment state. The examiner disagrees. Silverman discloses separate graft members (16, 18, 52, 54, 56). Even though Silverman's graft members may be disclosed as being deployed together, because they are separate members, they are still capable and structurally configured to be separately layered. Also, because the nature of the claims being product claims, how the members are inserted and deployed are method steps and are irrelevant, since the end product of Silverman is the same as the end product that the applicant has claimed in the product claims. Applicant has argued that Dereume et al. (USPN 5,639,278) does not disclose at least two of the graft members having a length greater than the preselected length of the patient's body lumen, that Dereume does not disclose at least two layers of graft members present across the length of the lumen being treated, and that an overlapped portion of the first and second graft members do not span a section of the lumen being treated. The examiner disagrees. Dereume discloses two graft members, wherein each of the members individual length or layered length, is greater than a preselected length of the lumen being treated. The preselected length, as claimed, could be any length of the vessel. The area being treated, is any area covered by the graft members. Therefore, the graft members, individually or overlapped, do extend along a length of the vessel. It is noted to the applicant, that claiming a length of a vessel is a possible 101 issue, wherein positively claiming a portion of the body is non-statutory subject matter. It is also noted to the applicant, that the method claims, as broadly claimed, do not claim separate steps, such as step a, b, c, etc. therefore there is no specific order to any steps in the claims, and also do not claim specifically to separately layer the second graft member, therefore, as the claims now read, the grafts may be inserted and deployed together. The examiners opinion is believed to be adequately described in the final rejection and the comments above. The final rejection still stands.